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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : February 12, 2015

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W.P.(C) 3834/2013

PARMA NAND YADAV & ORS. Petitioners

Represented by: Ms.Rekha Palli, Advocate with
Ms.Ankita Patnaik and Ms.Shruit
Munjal, Advocates

versus

UNION OF INDIA & ORS. Respondents

Represented by: Mr.Vikram Jetly, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. Learned counsel for the respondents concedes to the point that albeit facts being different with respect to the dates, but the effect thereof is the same as was in the decision dated May 26, 2011 in W.P.(C) No.5400/2010 Avinash Singh Vs. UOI & Ors., which was followed with approval in the decision dated November 02, 2012 in W.P.(C) No.3827/2012 Naveen Kumar Jha Vs. UOI & Ors., the latter decision being as under:-

1. The writ petition was listed for preliminary hearing on July 03, 2012 when counsel appeared for the respondents on advance copy being served and accepted show-cause notice and simultaneously obtained 6 weeks time to file reply to the show-cause notice. On the next date i.e. September 03, 2012, further time was granted to file a counter affidavit and the matter was listed for October 01, 2012. On said date further time was granted to file a counter affidavit and matter was listed for today. Counter affidavit has not been filed till dated. Right to

file counter affidavit is closed.

2. *Even otherwise, a purely legal issue arises for consideration in view of the fact that the factual backdrop in which the controversy arises can hardly be disputed by the respondents inasmuch as the material annexures relied upon by the writ petitioner are the communications received from the respondents.*

3. *The Staff Selection Commission invited applications to fill up posts of Sub-Inspector in Central Para Military Forces and titled the selection process as 'SSC Combined Graduate Level 2000'. The petitioner applied and took the examination. He cleared the written examination as also the Physical Efficiency Test.*

4. *Required to appear before a Medical Board for fitness to be ascertained, the petitioner was declared medically unfit as per medical examination conducted on February 04, 2002. Since the procedures of the law entitled the petitioner to seek a re-medical examination by being brought before a Review Medical Board and for which he had to file an appeal within 30 days of unfitness being intimated, on February 25, 2002 the petitioner submitted the necessary appeal. Unfortunately, for him he heard nothing from the respondents on the subject i.e. the date and the place where petitioner was required to be present to be re-examined by the Review Medical Board and in the meanwhile the candidature of others was processed. It was only on January 18, 2003 that the petitioner was intimated to be present before the Review Medical Board and the petitioner duly presented himself before the Board and upon examination was declared fit. By March 2003 others who were successful had joined the respective Para Military Force to which they were allocated to. The petitioner was called for interview on July 2003 and thereafter having cleared the interview was issued letter offering appointment as a Sub-Inspector in CRPF in April 2004. The petitioner thereafter successfully completed the induction training and was attached to the 72nd Bn. CRPF.*

5. *The problem which the petitioner has highlighted is of not only being placed junior to the entire batch which joined*

CRPF pursuant to the SSC Combined Graduate Level 2000 Examination but even junior to those who took the SSC Combined Graduate Level 2001 and SSC Combined Graduate Level Examinations held thereafter; the petitioner being placed at the top of the list of the 2004 year batch.

6. *This has affected the petitioner adversely because Sub-Inspectors of his batch have earned promotions to the rank of Inspector and are being considered for further promotion to the post of Assistant Commandant.*

7. *Though the petitioner has earned promotion to the post of Inspector but even in said rank has lost out in seniority and right to be considered along with his batchmates for promotion to the post of Assistant Commandant.*

8. *Another injury suffered by the petitioner is the change in the policy of the Central Government to do away with old Pension Scheme which automatically made eligible all those who joined Central Government prior to December 31, 2003. The petitioner has been held entitled to the new Pension Scheme.*

9. *With respect to the Pension Scheme it assumes importance to note that petitioner's batchmates were issued letters offering appointment in March 2003 and had petitioner likewise been issued a letter offering appointment, he too would have been a member of the old Pension Scheme. As a result of petitioner being offered employment in April 2004, he has perforce been made a member of the new Pension Scheme.*

10. *On the subject of delay in conducting Review Medical Boards, in the decision dated May 26, 2011 deciding WP(C) No.5400/2010 Avinash Singh vs. UOI & Ors., a Division Bench of this Court held, in para 17 to 20 as under:-*

“17. It is settled law that if appointment is by selection, seniority of the entire batch has to be reckoned with respect to the merit position obtained in the selection and not on the fortuitous circumstance on the date on which a person is

made to join.

18. We highlight in the instant case the fortuitous circumstance of the petitioners being made to join as Assistant Commandant on 08.08.2005 is not the result of anything created by the petitioners but is a result of a supine indifference and negligence on the part of the ITBP officials.

19. Thus, petitioners would be entitled to their seniority as Assistant Commandant with respect to their batch-mates in the context of the merit position in the select panel. We make it clear, the seniority as Assistant Commandant of the entire batch would be a reflection of the merit position in the select list and not the date of joining.

20. It is trite that where a thing is deemed to come into existence everything which logically flows therefrom has to be followed and the imagination cannot boggle down. In other words, the effect of the petitioners' seniority being reckoned with reference to the select panel would mean that the petitioners would come at par with their brethren who joined on 02.11.2004. Since their brethren were granted 1 year qualifying service relaxation, petitioners would be entitled to the same benefit and additionally for the reason the next below rule requires that if a person junior in the seniority position acquires the necessary qualifying service, the person above has also to be considered for promotion."

11. On facts it needs to be noted that the seven petitioners of WP(C) No.5400/2010 had lost out on their seniority with reference to their merit position in the Select List due to delay in conducting their Review Medical Evaluation and in the interregnum their batchmates had joined ITBP.

12. On parity of reasoning and application of law the petitioner is held entitled to his seniority being refixed as a Sub-

Inspector in CRPF with reference to his merit position at the SSC Combined Graduate Level 2000 Examination i.e. those who joined CRPF pursuant to the said examination in March 2003. The petitioner has already earned promotion to the post of Inspector and accordingly we direct that he would be entitled to seniority refixed in said rank with reference to his revised seniority position in the rank of Sub-Inspector, and this would mean that the petitioner would be considered for promotion to the post of Assistant Commandant as per the revised seniority list.

13. The respondents are therefore directed to revise the seniority position of the petitioner in the two ranks within a period of four weeks from today and thereafter consider the petitioner along with other eligible persons for promotion to the post of Assistant Commandant.

14. As regards wages, on the principle of not having shouldered responsibility for the higher post, we do not direct backwages to be paid.

15. On the subject of the petitioner being entitled to the old Pension Scheme, in similar circumstances, deciding WP(C) No.10028/2009 Amrendra Kumar vs. UOI & Ors., where the petitioner therein was also similarly deprived the opportunity to join with his batch on account of delay in conducting medical re-examination, the Court had directed that said writ petitioner would be entitled to the benefit of the old Pension Scheme which remained in force till December 31, 2003.

16. The petitioner would be entitled to similar benefit and accordingly the next mandamus issued is by way of a direction to the respondents to treat the petitioner as a member of the pension scheme which remained in vogue till December 31, 2003.

17. No costs.

2. Relevant facts need to be simply noted by us before issuing formal directions granting petitioners same relief as was granted to Naveen Kumar

Jha and Avinash Singh.

3. The Staff Selection Commission issued an advertisement in the Employment News 9-15 November, 2002 inviting applications to fill up posts of Sub-Inspectors in four Central Para Military Forces, being BSF, CISF, CRPF and ITBP. The result was declared on July 28, 2003.

4. Depending upon the option exercised and the merit position, empanelled candidates were allocated the paramilitary force. Some were allocated BSF, some CISF, some CRPF and the remainder ITBP.

5. The persons were thereafter issued letters offering appointment on various dates in the month of October, 2003 by other paramilitary forces. In BSF they were issued in the month of December, 2003.

6. On December 22, 2003 the new contributory pension scheme was introduced, to be implemented with effect from January 01, 2004.

7. When letters offering appointment were issued, it was not indicated that the candidates would be members of the new contributory pension scheme, which condition was sought to be inserted in the letters offering appointment on May 18, 2004.

8. In the case of BSF, of which petitioners are enrolled members of the Force, letters offering appointment were delayed by three months, a fact admitted by the respondents, and as to be found in the DG BSF admitting said fact in the counter affidavit filed.

9. Thus, for parity of reasons, same relief as was granted to Naveen Kumar Jha and Avinash Singh must flow to the writ petitioners, and thus we adopt the reasoning in the two decisions, and hence we have reproduced the same hereinabove.

10. The petition is allowed issuing a mandamus to the respondents to treat the petitioners as a member of the pension scheme which was in vogue till

December 31, 2003 and not to treat them as members of the new pension contributory fund scheme.

11. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

FEBRUARY 12, 2015
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